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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2302

Introduced by Committee on Judiciary (Jones (Chair), Evans, Laird, Levine, Lieber, and Montanez)
(Principal coauthors: Assembly Members Arambula, Baca, Bass, Berg, Bermudez, Calderon, Chan, Chu, Coto, De La Torre, Frommer, Goldberg, Shirley Horton, Karnette, Koretz, Lieu, Liu, Nakanishi, Nation, Oropeza, Parra, Pavley, Ridley-Thomas, Saldana, Salinas, Torrico, and Vargas)
(Principal coauthors: Senators Cedillo, Ducheny, Escutia, Ortiz, and Speier)

February 22, 2006

An act to amend Section 755 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2302, as amended, Committee on Judiciary. Evidence: court interpreters.

Existing law requires that in any action or proceeding pursuant to specified provisions of law, an interpreter be provided by the court for a party who is incapable of understanding or speaking the English

language to interpret the proceedings in a language that the party understands and to assist communication between the party and his or her attorney.

This bill would revise the above provision to specify that in any civil action or proceeding, including, but not limited to, any family court proceeding, any small claims court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, with specified exceptions, in which a party does not proficiently speak or understand the English language, an interpreter is required to be present to interpret the proceedings, as specified. The bill would also require a court to provide the interpreter, unless a party has notified the court that he or she has made arrangements for a private interpreter.

Existing law requires the fees of interpreters to be paid by the litigants in civil cases, as directed by the court, but further requires the fees of an interpreter to be waived for a party who needs an interpreter and appears in forma pauperis.

This bill would revise that provision to specify that the fees of interpreters shall be paid by the court. The bill would authorize the court, if a party whose fees have been waived prevails in the action, to assess the amount of waived fees against that party in a manner the court believes is compatible with the party's financial ability, or assess those fees to another party, as specified. The bill would additionally establish the order of precedence in which interpreters would be assigned in cases if sufficient funds are not allocated in the annual Budget Act or are not otherwise provided to meet the needs for court interpreters in all civil actions and proceedings, or if a sufficient number of interpreters is not available, as specified.

This bill would also require the Judicial Council to conduct a study of the need for court interpreters in civil proceedings and the extent to which the need for interpreters is being met, and to report its findings to the Governor and the Legislature by March 1, 2009, and every 2 years thereafter. The bill would also make related changes to that provision of law and would set forth findings and declarations of the Legislature.

This bill would further require the Judicial Council to adopt training guidelines so that each trial court, in consultation with the exclusive representative of interpreters, ensures that court interpreters receive specified training.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares as follows:

2 (a) California is emblematic of the American dream, a place of
3 stunning natural beauty, a seat of international commerce, and a
4 land of unparalleled opportunity. As a result, California is the
5 most populous and demographically diverse state in the nation, a
6 meeting place of cultures, ethnicities, and ideas unlike any other
7 in the world. Of the state's 34 million people, about 26 percent
8 (roughly 8.8 million people) are foreign born. Californians speak
9 more than 220 languages, and 40 percent of the state's population
10 speaks a language other than English in the home. This
11 extraordinary diversity is among the state's greatest assets and
12 has helped make California an international leader in business,
13 the arts, entertainment, engineering, medicine, and other fields.
14 The state's diversity also poses unique challenges for the delivery
15 of government services, particularly for the courts.

16 (b) For Californians not proficient in English, the prospect of
17 navigating the legal system is daunting, especially for the
18 growing number of parties who do not have access to legal
19 services and therefore have no choice but to represent themselves
20 in court, which is a virtually impossible task for people who are
21 unable to understand the proceedings. Nearly seven million
22 Californians cannot access the courts without significant
23 language assistance, cannot understand pleadings, forms, or other
24 legal documents, cannot communicate with clerks or court staff
25 and cannot understand or participate meaningfully in court
26 proceedings, much less effectively present their cases without a
27 qualified interpreter. People with limited English proficiency are
28 also often members of groups whose cultural traits or economic
29 circumstances make them more likely to be subjected to legal
30 problems, in part because perpetrators recognize their victims'
31 limited ability to access judicial protection.

32 (c) The Legislature has previously recognized that the number
33 of non-English speaking persons in California is increasing, and
34 recognized the need to provide equal justice under the law to all
35 California residents and to provide for their special needs in their

1 relations with the judicial and administrative law system. The
2 Legislature has likewise recognized that the effective
3 maintenance of a democratic society depends on the right and
4 ability of its residents to communicate with their government and
5 the right and ability of the government to communicate with
6 them.

7 (d) Inadequate resources to assist litigants with limited English
8 proficiency affect the court's ability to function properly, causing
9 delays in proceedings for all court users, inappropriate defaults,
10 and faulty interpretation that can ultimately subvert justice. Our
11 judicial system relies on the adversarial process in which neutral
12 arbiters decide disputes based upon competing presentations of
13 facts and law. Conducting court proceedings when one party is
14 incapable of fully participating significantly impairs the quality
15 and efficiency of the process and its results, including
16 compliance with court orders. The courts have made significant
17 efforts to assist litigants with limited English proficiency,
18 including steps to increase the number of certified and registered
19 interpreters and to provide interpreters in civil cases, if resources
20 are available. Nevertheless, court proceedings are required to be
21 conducted in English, and most crucial court forms and
22 documents are available only in English, while the number of
23 skilled interpreters has actually declined over the past decade and
24 the number of persons requiring interpreter services has
25 increased. As a result, a qualified interpreter is not provided in
26 most civil proceedings.

27 (e) The inability to respond to the language needs of parties in
28 court impairs trust and confidence in the judicial system and
29 undermines efforts to secure justice for all. The authority of the
30 courts depends on public perceptions of fairness and
31 accessibility. Any significant erosion of public trust and
32 confidence in the fairness of judicial outcomes threatens the
33 future legitimacy of the legal system. By excluding a large
34 segment of the population from participation in an institution that
35 shapes and reflects our values, we threaten the integrity of the
36 judicial process. Resentment fostered by the inability to access
37 the benefits of the court system can ultimately impair
38 enforcement of judicial decrees and attenuate the rule of law.

39 (f) Reliance on untrained interpreters, such as family members
40 or children, can lead to faulty translations and threaten the court's

1 ability to ensure justice. Court interpretation is extremely
2 difficult and takes a rare combination of skills, experience, and
3 training. Apart from the possibility of fraud, unqualified
4 interpreters often fail to accurately and comprehensively convey
5 questions and distort testimony by omitting or adding
6 information, or by stylistically altering the tone and intent of the
7 speaker, thereby preventing courts from hearing the testimony
8 properly. These problems compromise the factfinding process
9 and can result in genuine injustice.

10 (g) An overwhelming number of Californians believe that
11 interpreters should be made available to assist non-English
12 speakers in all court proceedings, and that interpreters should be
13 provided free of charge to low-income non-English speakers.

14 (h) California law currently mandates appointment of an
15 interpreter for all witnesses in civil cases, and for parties with
16 hearing impairments. In addition, California statutes mandate the
17 appointment of an interpreter in adjudicative proceedings before
18 state agencies, boards, and commissions at no charge to the
19 parties whenever a party or the party's witness does not
20 proficiently speak or understand English. Other states by contrast
21 provide both witnesses and parties with a right to a
22 court-appointed interpreter in all civil matters at no cost to the
23 party.

24 SEC. 2. Section 755 of the Evidence Code is amended to
25 read:

26 755. (a) In any civil action or proceeding, including, but not
27 limited to, any family court proceeding, any proceeding to
28 determine the mental competency of a person, or any
29 court-ordered or court-provided alternative dispute resolution,
30 including mediation and arbitration, in which a party does not
31 proficiently speak or understand the English language, and that
32 party is present, an interpreter, as provided in this section, shall
33 be present to interpret the proceedings in a language that the
34 party understands, and to assist communication between the party
35 and his or her attorney. This section does not apply to any
36 arbitration ordered by the court under Title 9 (commencing with
37 Section 1280), Title 9.1 (commencing with Section 1295), Title
38 9.2 (commencing with Section 1296), Title 9.3 (commencing
39 with Section 1297.11), Title 9.3 (commencing with Section
40 1298) or Title 9.5 (commencing with Section 1299), of Part 3 of

1 the Code of Civil Procedure. Notwithstanding this requirement, a
2 court may issue an ex parte order pursuant to Sections 2045 and
3 7710 of, and Article 1 (commencing with Section 6320) of
4 Chapter 2 of Part 4 of Division 10 of, the Family Code, without
5 the presence of an interpreter. Unless a party has notified the
6 court that he or she has made arrangements for a private
7 interpreter, the court shall provide the interpreter. The interpreter
8 shall be certified pursuant to Article 4 (commencing with Section
9 68560) of Chapter 2 of Title 8 of the Government Code, except
10 as provided in subdivision (c) of Section 68561 of the
11 Government Code.

12 (b) (1) The fees of interpreters utilized under this section shall
13 be paid by the court.

14 (2) If a party whose fees have been waived prevails in the
15 action or proceeding or obtains a monetary settlement of his or
16 her claims, the court may assess the amount of the waived fees
17 either against that party in any manner the court believes is
18 compatible with the party's financial ability, or assess those fees
19 to another party against whom the party whose fees and costs
20 have been waived would have been entitled to recover those fees
21 had they not been waived, and order the other party to pay that
22 sum to the court or to the clerk and serving and levying officers
23 respectively or order the amount of the waived fees added to the
24 judgment and so identified by the clerk.

25 (3) If sufficient funds are not allocated in the annual Budget
26 Act or are not otherwise provided to meet the needs for court
27 interpreters in all civil actions and proceedings, or if after diligent
28 search a sufficient number of interpreters is not available for all
29 civil actions and proceedings, interpreters shall be assigned in the
30 following order of priority, subject to any rules that the Judicial
31 Council may adopt to implement the priority guidelines in this
32 section so as to ensure that court interpreters are provided in civil
33 matters consistently with sound and efficient court administration
34 and prudent personnel practices:

35 (A) Parties appearing in forma pauperis or whom the court
36 otherwise determines are financially unable to pay the cost of an
37 interpreter in the following order of precedence by case type:

38 (i) Actions and proceedings under Section 527.6 of the Code
39 of Civil Procedure or under Division 10 (commencing with
40 Section 6200) of the Family Code.

1 (ii) Actions and proceedings under the Uniform Parentage Act
2 (Part 3 (commencing with Section 7600) of Division 12 of the
3 Family Code) *and actions and proceedings under Part 4*
4 *(commencing with Section 7800) of Division 12 of the Family*
5 *Code.*

6 (iii) Actions and proceedings for dissolution or nullity of
7 marriage or legal separation of the parties in which a protective
8 order has been granted or is being sought pursuant to Section
9 6221 of the Family Code or a protective order has been granted
10 or is being sought pursuant to Section 136.2 or paragraph (2) of
11 subdivision (a) of Section 1203.097 of the Penal Code.

12 (iv) Actions and proceedings relating to unlawful detainer.

13 (v) Actions and proceedings under the Elder Abuse and
14 Dependent Adult Civil Protection Act (Chapter 11 (commencing
15 with Section 15600) of Part 3 of Division 9 of the Welfare and
16 Institutions Code).

17 (vi) Actions and proceedings involving the appointment of a
18 guardian or conservator.

19 (vii) Actions and proceedings in small claims court,
20 notwithstanding Section 116.550 of the Code of Civil Procedure.

21 (viii) Actions and proceedings arising out of or related to
22 employment.

23 (ix) Actions and proceedings with respect to claims alleging
24 violation of civil rights.

25 (x) Other actions and proceedings in family court.

26 (xi) Other actions and proceedings in probate court.

27 (xii) Other limited civil actions and proceedings.

28 (xiii) Other unlimited civil actions and proceedings.

29 (B) Parties appearing in propria persona in the following order
30 of precedence by case type:

31 (i) Actions and proceedings under Section 527.6 of the Code
32 of Civil Procedure or under Division 10 (commencing with
33 Section 6200) of the Family Code.

34 (ii) Actions and proceedings under the Uniform Parentage Act
35 (Part 3 (commencing with Section 7600) of Division 12 of the
36 Family Code) *and actions and proceedings under Part 4*
37 *(commencing with Section 7800) of Division 12 of the Family*
38 *Code.*

39 (iii) Actions and proceedings for dissolution or nullity of
40 marriage or legal separation of the parties in which a protective

1 order has been granted or is being sought pursuant to Section
2 6221 of the Family Code or a protective order has been granted
3 or is being sought pursuant to Section 136.2 or paragraph (2) of
4 subdivision (a) of Section 1203.097 of the Penal Code.

5 (iv) Actions and proceedings relating to unlawful detainer.

6 (v) Actions and proceedings under the Elder Abuse and
7 Dependent Adult Civil Protection Act (Chapter 11 (commencing
8 with Section 15600) of Part 3 of Division 9 of the Welfare and
9 Institutions Code).

10 (vi) Actions and proceedings involving appointment of a
11 guardian or conservator.

12 (vii) Actions and proceedings arising out of or related to
13 employment.

14 (viii) Actions and proceedings with respect to claims alleging
15 violation of civil rights.

16 (ix) Other actions and proceedings in family court.

17 (x) Other actions and proceedings in probate court.

18 (xi) Other limited civil actions and proceedings.

19 (xii) Other unlimited civil actions and proceedings.

20 (C) Actions and proceedings in small claims court,
21 notwithstanding Section 116.550 of the Code of Civil Procedure.

22 (D) Other parties in the following order of precedence by case
23 type:

24 (i) Actions and proceedings under Section 527.6 of the Code
25 of Civil Procedure or under Division 10 (commencing with
26 Section 6200) of the Family Code.

27 (ii) Actions and proceedings under the Uniform Parentage Act
28 (Part 3 (commencing with Section 7600) of Division 12 of the
29 Family Code) and actions and proceedings under Part 4
30 (commencing with Section 7800) of Division 12 of the Family
31 Code.

32 (iii) Actions and proceedings for dissolution or nullity of
33 marriage or legal separation of the parties in which a protective
34 order has been granted or is being sought pursuant to Section
35 6221 of the Family Code or a protective order has been granted
36 or is being sought pursuant to Section 136.2 or paragraph (2) of
37 subdivision (a) of Section 1203.097 of the Penal Code.

38 (iv) Actions and proceedings relating to unlawful detainer.

39 (v) Actions and proceedings under the Elder Abuse and
40 Dependent Adult Civil Protection Act (Chapter 11 (commencing

1 with Section 15600) of Part 3 of Division 9 of the Welfare and
2 Institutions Code).

3 (vi) Actions and proceedings involving the appointment of a
4 guardian or conservator.

5 (vii) Actions and proceedings in small claims court,
6 notwithstanding Section 116.550 of the Code of Civil Procedure.

7 (viii) Actions and proceedings arising out of or related to
8 employment.

9 (ix) Actions and proceedings with respect to claims alleging
10 violation of civil rights.

11 (x) Other actions and proceedings in family court.

12 (xi) Other actions and proceedings in probate court.

13 (xii) Other limited civil actions and proceedings.

14 (xiii) Other unlimited civil actions and proceedings.

15 (4) This section shall not be construed to negate or limit any
16 right to an interpreter in a civil action or proceeding otherwise
17 provided by state or federal law.

18 (c) Except as provided in paragraph (3) of subdivision (b) any
19 civil action in which an interpreter is required and provided
20 under this section, the court shall not commence proceedings
21 until the appointed interpreter is present and situated near the
22 party and his or her attorney. However, this section shall not
23 prohibit the court from doing either of the following:

24 (1) Issuing an order when the necessity for the order
25 outweighs the necessity for an interpreter.

26 (2) Extending the duration of a previously issued temporary
27 order if an interpreter is not readily available.

28 (d) This section does not prohibit the presence of any other
29 person to assist a party.

30 (e) A local public entity may, and the Judicial Council shall,
31 apply to the appropriate state agency that receives federal funds
32 authorized pursuant to the federal Violence Against Women Act
33 (P.L. 103-322) for these federal funds or for funds from sources
34 other than the state to implement this section.

35 (f) The Judicial Council shall draft rules and modify forms
36 necessary to implement this section, including those for the
37 petition for a temporary restraining order and related forms, to
38 inform both parties of their right to an interpreter pursuant to this
39 section.

1 (g) This section shall not be construed to alter the right of an
2 individual to an interpreter in criminal, traffic or other infraction,
3 juvenile, or mental competency actions or proceedings.

4 SEC. 3. The Judicial Council shall conduct a study of the
5 need for court interpreters in civil proceedings and the extent to
6 which the need for interpreters is being met pursuant to Section
7 755 of the Evidence Code, and shall report its findings and
8 recommendations to the Governor and the Legislature on or
9 before March 1, 2009, and every two years thereafter. The study
10 shall include data showing, by court, the languages for which
11 parties in civil matters need a court-provided interpreter
12 according to type of action or proceeding and whether the party
13 appears in propria persona or in forma pauperis, as well as the
14 extent to which each of these needs is met by court employees or
15 independent contractors, certified or registered interpreters or, if
16 not by a certified or registered interpreter, then the circumstances
17 warranting good cause for appointment of a noncertified
18 interpreter, the amounts expended for each according to court,
19 type of party and type of action or proceeding, and the fees
20 apportioned and collected from parties pursuant to paragraph (2)
21 of subdivision (b) of Section 755 of the Evidence Code. The
22 report shall include findings and recommendations regarding the
23 need for additional interpreters and interpreter compensation,
24 whether the availability of interpreters or the assessment of party
25 fees has an impact on equal access to justice, and the effect of
26 court interpreters on court administration and efficiency,
27 including reduced courtroom time for hearings, increased
28 compliance with orders and court schedules, reduced case delays,
29 and enhanced coordination between courts and culturally relevant
30 services in the community.

31 SEC. 4. The Judicial Council shall adopt training guidelines
32 so that each trial court, in consultation with the exclusive
33 representative of interpreters, ensures that court interpreters
34 receive any training necessary to comply with the requirements
35 of this act. Training activities may include, but are not limited to,
36 video broadcasts, Internet-based training, and dissemination of
37 written materials.